

Remarks

The Applicants have amended claims 1, 2, and 7. The Applicants have canceled claims 13-18. Applicants respectfully submit that no new matter was added by the amendment, as the relevant matter was either previously illustrated or described in the drawings, written specification and/or claims of the application. Entry of the amendment and favorable consideration thereof is earnestly requested.

Claim Rejections – 35 U.S.C. § 102(e)

The Examiner has rejected claims 1-12 as being anticipated by U.S. Patent No. 6,270,508 to Klieman et al. ("Klieman"). It is well settled that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Klieman does not anticipate the present invention as claimed in 1-12 because Klieman does not teach or suggest a form-locking connection between the push pin and the rigid casing that secures rotation of the push pin relative to the casing about the longitudinal axis of the rigid casing. In addition, Klieman does not disclose a recess in a rigid casing. Finally, Klieman is missing a rigid casing have a recess with a rectilinear cross-section in a plane substantially perpendicular to the longitudinal axis of the shaft.

Telephone Interview of February 11, 2009

After issuing the Official Action dated 28 January 2009 the Examiner initiated a teleconference to discuss the newly cited reference. During the call the Applicants pointed to the absence of a rigid casing having a recess, or a recess having a rectilinear cross section in Klieman as a basis for patentability. In addition, the Applicants pointed to the absence of the push pin being mounted secure against rotation in some sections of the rigid casing as an independent basis for patentability. In response, the Examiner stated that Klieman did not appear to disclose these limitations; however the Examiner

requested that the Applicants amend the claims to clearly distinguish Klieman by specifying the direction in which the form locking connection between the push pin and the rigid casing secures rotation of the pushpin, and by specifying the direction of the rectilinear cross-section, and thereby distinguish the cited Klieman reference.

Claim Amendments in Response to Interview

The Applicants have amended the claims as suggested by the Examiner during the Interview to further define the present invention and distinguish Klieman. Specifically, the Applicants have amended claim 1 to further define the axis of rotation in which the push pin is secure against rotation. The Applicants have amended dependent claim 2 to further require that the recess of the rigid casing for receiving the push pin has rectilinear cross-section in a plane substantially perpendicular to the longitudinal axis. Finally, the Applicants have amended independent claim 7 to incorporate both of these limitations.

Response to Claim Rejections – 35 U.S.C. § 102(e)

Klieman does not anticipate the present invention because Klieman is missing a form-locking connection of the push pin and the rigid casing that secures the push pin against rotation relative to said rigid casing about the longitudinal axis at least in some sections in the casing as required by all pending claims. It is an objective of the present to install the push pin so that at least sections of it are rotation-resistant in order to ensure the best possible power transmission along with a good cutting sensation for the operator. Klieman, like the reference cited in paragraph [0005] of the Application, does not provide the requisite resistance to torsion of the pushpin in the shaft of the instrument because the cylindrical push pin is installed in a shaft with cylindrical channel cross-section for the push pin, and therefore the push pin can rotate freely inside the shaft.

Klieman discloses a surgical instrument, specifically a needle holder, used in laparoscopy. The Klieman needle holder provides for grasping, rotating, and rolling a needle with jaw members located at the distal end of the tool. (Klieman col. 2, Ins. 5-25). In reference to FIGS. 1-6 Klieman includes an outer tubular barrel 10, a control tube 32 which is coaxial with and internal to the tubular barrel 10, and a control rod 30 which is coaxial with and internal to the control tube 32. Both the control tube 32 and the control rod 30 are independent linkages. Axial motion of the control tube 32 causes a shearing of the jaws for rotating a needle grasped by the jaws. Axial motion of the control rod 30 causes an opening and closing of the jaws for grasping the needle.

In the most recent Official Action the Examiner states that the control rod 30 meets the limitation of the push pin, and that the control tube 32 meets the limitation of the rigid casing. Presumably, the Examiner infers that the control rod 30 (rigid casing) and control tube 32 (push pin) are in form-locking connection, as required by all pending claims, because the control rod 30 is coaxial with and internal to the control tube 32.

Klieman does not anticipate the present invention because the form locking connection between the control rod 30 and the control tube 32, to the extent on exist, does not secure the control rod 30 against rotation relative to the control tube 32 about the longitudinal axis in any section of the control tube 32 as required by all pending claims. Klieman teaches that the control rod is an elongated rod having a circular outer cross-section in a plane perpendicular to the longitudinal axis. Likewise, Klieman teaches that the control tube is an elongated hollow tube with an inner enclosed channel having a circular cross-section in a plane perpendicular to the longitudinal axis. This configuration of the concentric internal rod and tube, to the extent considered form-locking, does not prevent rotation of the control rod relative to the control tube in any some section of the control tube 32 as required by all pending claims. In other words, the control rod is free to rotate about the longitudinal axis relative to the control tube in all section of the control tube.

Klieman does not anticipate the present invention because Klieman does not disclose a rigid casing having a recess as required by claims 2, and 7-12.. The Applicants respectfully submit that a recess is an alcove, indentation, or similar concavity. A recess is not a complete enclosure. For example, the tubular control tube 32 of Klieman does not include a recess because the hollow enclosure is completely surrounded by the housing wall of the control tube in a plane substantially perpendicular to the longitudinal axis.

Klieman is also missing a rigid casing having a recess with a rectilinear cross-section in a plane substantially perpendicular to the longitudinal axis of the shaft as required by claims 2, 7-12 of the present invention. As discussed above and shown in described in the drawings and specification of Klieman, the control tube 32 has an internal tubular section having a circular cross-section in a plane substantially perpendicular to the longitudinal axis of the shaft. Therefore Klieman does not anticipate the claim invention. In fact, Klieman teaches away from the present invention because Klieman teaches in all embodiments that the rod has a circular cross-section and that the interior of the tube has a circular cross-section. In addition, Klieman teaches that this configuration is necessary to facilitate the rotation of the rod, tube, and outer shaft along the longitudinal axis of the tool relative the proximal end of the tool.

Conclusion

For the foregoing reasons, the Applicants respectfully submit that all pending claims are allowable over the reference of record, and earnestly solicit allowance of the same.

Respectfully submitted,

/Wesley W. Whitmyer, Jr./

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